WP(C) 7557/2002
BEFORE
THE HON'BLE MR. JUSTICE B.K. SHARMA
JUDGMENT AND ORDER
(Oral)

None appears for the petitioner. I have heard Mr. A. Dutta, learned counsel appearing for the respondents.

2. This writ petition is directed against the order dated 23.8.2002 (Annexure-XIV) by which the petitioner has been dismissed from service pursuant to a departmental proceeding. The charge against the petitioner was of unauthorized absence from duty. It is on record that the petitioner was on leave from 8.1.1997 to 31.1.1997. On expiry of the period of leave, he did not join his duty and remained absence from duty with effect from 1.2.1998. It was only after expiry of about six months of such unauthorized absence, the respondents had received one sick certificate from the particular doctor suggesting extension of leave of the petitioner. However, the said certificate was not accompanied by any application of the petitioner seeking extension of leave. He remained absent from duty for long 22 months during which period the respondents had received altogether five medical certificates without any supporting leave applications.

3. It is in the aforesaid circumstance, a departmental proceeding on the charge of unauthorized absence from duty was drawn against the petitioner. The charge sheet was sent to the writ petitioner at his permanent home address by registered post and subsequent reminders were also issued to the petitioner by registered post on 27.8.1998. When the Inquiry Officer was appointed and charges were drawn, notice was also sent to the petitioner at his permanent home address by registered post.

4. The plea of the petitioner was that he having not received any notice could not participate in the enquiry proceeding. Being aggrieved by the punishment imposed, the petitioner had approached this Court by filing a writ petition which was registered and numbered as W.P.(C) No.1711 of 1999. The writ petition was disposed of by judgment and order dated 21.2.2002 holding that the entire departmental proceeding and the consequential order of dismissal were all vitiated because of violation of the principles of natural justice as no notice was served upon the petitioner. However, the Court declined to pass any order for reinstatement of the writ petitioner and instead granted liberty to the respondents to initiate fresh enquiry against the petitioner by giving him adequate notice and of reasonable opportunity of being heard. While making the provision, the Court also noticed that the petitioner has been out of employment from 1998.

5. Pursuant to the aforesaid order passed by this Court, fresh charge sheet was issued to the petitioner on 16.3.2002 with the charge of absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave.

6. Petitioner in his written statement of defence while admitting the absence from duty attributed the same to his alleged illness. As noticed above, the period of absence from duty is for 22 months. In the written statement, the petitioner had assigned the reason for absence from duty to be his alleged illness.

7. The disciplinary authority being not satisfied with the written statement of defence decided to conduct an enquiry and in the enquiry the petitioner was provided with all reasonable opportunity of being heard. The Inquiry Officer, on the basis of the evidence on record, held the petitioner guilty of the charges of unauthorized absence. The report dated 7.5.2002 by which the final findings is recorded is as follows :-

Final finding

As per model standing order applicable to Coal Industry, it has been clearly stated that absenteeism for more than 10 days (ten) is an cognigible offence. In this case from the documents produced by the delinquent it shows that his leave expires on 31.1.97. But he informed the management on 17.2.97 (as per register receipt no.4148). Moreover during enquiry Sri Tatayya accepted that he has sent only medical certificate (zerox copies) but never applied for any extension of leave.

Hence the charge levelled against Sri S. Tattaya under Clause No.26.30 is proved, as he failed to inform the management within the stipulated time of 10 (ten) days.

8. On the basis of the aforesaid findings record by the Inquiry Officer and upon following the procedure, the disciplinary authority by its impugned order dated 23.8.2002 (Annexure-XIV) imposed the penalty of dismissal from service as per provisions of Clause 27.1(h) of the Standing Order applicable in the case. The order was issued with the approval of the competent authority.

9. The petitioner has challenged the aforesaid order on the ground of procedural irregularities in conducting the enquiry. According to the petitioner, his explanation for absence from duty ought to have been accepted. It is the stand of the petitioner that the unauthorized absence, even if, held to have been established, the same cannot entail the extreme penalty of dismissal from service. Some general and vague statements have been made that the enquiry was not conducted in a proper manner and that there was violation of the principles of natural justice.

10. Needless to say that, the Writ Court exercising its power of judicial review under Article 226 of the Constitution of India cannot sit on appeal over the findings recorded by an authority concerned with the departmental proceeding. Needless also to say that it cannot re-appreciate the evidence on record. There is nothing on record to show that the defence of the petitioner was prejudiced in any manner in the enquiry proceeding. As per Clause 26.30 and Clause 27.1(h) of the Standing Order, which has been quoted in the counter affidavit, the misconduct of absence from duty without sanctioned leave or sufficient cause or overstaying beyond the sanctioned leave may entail dismissal from service. The particular penalty having been prescribed in the Standing Order for the particular misconduct, this Court cannot substitute the penalty that has been imposed on the petitioner by the competent authority. In Union of India -Vs.- Mithilesh Singh, reported in 2000 (3) GLT 62, a Division Bench of this Court while interfering with the judgment of the learned Single Judge by which it was provided that the petitioner in that case be imposed with the penalty other than dismissal, removal and compulsory retirement held that the particular penalty having been prescribed in the particular offence, the disciplinary authority could not have been directed to impose a lesser penalty.

11. The aforesaid judgment of the Division Bench have been affirmed by the Hon’ble Apex Court in a judgment reported in (2003) 3 SCC 309 (Mithilesh Singh -Vs.- Union of India).

12. For the aforesaid reason, I do not find any merit in the writ petition and it is, accordingly, dismissed.